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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,057	01/25/2001	Loukritia Balkos	4754*39	5066
23416	7590	12/23/2004	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP			HECKENBERG JR, DONALD H	
P O BOX 2207			ART UNIT	PAPER NUMBER
WILMINGTON, DE 19899			1722	

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/769,057	BALKOS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Donald Heckenberg	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 08 December 2004.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1,4-8,10-14,18,20,21 and 23-32 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1,4-8,10-14,18,20,21 and 23-30 is/are allowed.
- 6) Claim(s) 31 and 32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 January 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Glenny (U.S. Pat. No. 3,120,678).

Glenny discloses a hamburger press. The press comprises a disc-shaped member (4). The disc member must inherently have some weight, and thus, be a "weight" member as well. The member has a passage (7) therethrough.

Glenny further discloses a carrying component having a substantially flat panel (9) and a handle (8) affixed to the flat panel. The flat panel has a generally planar surface to contact the food product to be pressed into a patty (see Figs. 1 & 2). The handle is sized to pass through the passage to allow the disc member move along the handle (see Figs. 1 & 2). The disc-weight member is movable along the handle as such to be positionable to overlie the flat panel and thereby facilitate the application of pressure to the food product (Figs. 1 & 2). Both the weight member and the flat panel are generally circular in plan (see Fig. 3). Glenny further explicitly discloses the

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disc-weight member to be rotatable about the handle- see cl. 2, 11. 35-41 describing the panel and handle as being rotatable relative to the weight member as part of adjusting the press. Glenny also discloses the peripheral surface of the disc-weight member to extend beyond the periphery of the flat panel (see Fig. 1).

Claim 31 recites that the peripheral surface of the disc-weight member is as such to provide a running surface for an object to enable food product extending beyond the peripheral sidewall to be removed during patty formation. The apparatus of Glenny is such that if food material clearly could be removed by an object running along the peripheral surface. Glenny therefore anticipates this limitation as well.

3. Applicants' arguments filed December 3, 2004 have been fully considered but they are not persuasive.

Applicants' assert that indicated allowable subject matter has been incorporated into claim 31.

While the subject matter now included in claim 31 was a part of elements recited in indicated allowable dependent claims, the new subject matter of claim 31 does not include those elements that specifically were deemed allowed in the dependent claims (see the reasons for indicating allowable

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subject matter in the previous Office Actions). As described above, Glenny still anticipates claims 31 and 32.

4. Claims 1, 4-8, 10-14, 18, 20, 21, 23-30 are allowed.

5. THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

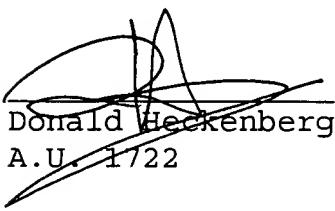
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (571) 272-1131. The

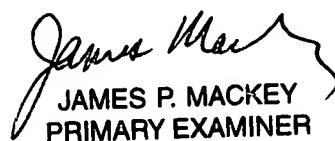
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examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin Utech, can be reached at (571) 272-1137. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

  
Donald Heckenberg  
A.U. 1722

  
JAMES P. MACKEY  
PRIMARY EXAMINER

12/21/04